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ABSTRACT

Intended for parents and interested professionals, the document describes P.L. 94-142 (Education for All Handicapped Children's Act) regulations concerning the right to a fair hearing. Topics covered include reasons a parent might request a hearing; what happens at a hearing; hearing rights; rules of evidence; use of expert witnesses, translators, and attorneys; access to records; time limits; putting things in writing; use of educational evaluations; and costs. The procedures regulating the child's educational placement during complaint proceedings are outlined. (Author/SBH)

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A Parent's Guide to Hearings under Public Law 94-142: The Education for All Handicapped Children Act

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Introduction

Public Law 94-142 is a law passed by the Congress of the United States. It protects the right of handicapped children to have a free and proper education in the public schools. If the public schools don't have a proper program then the school district pays for tuition in a private school. The law calls this a "free and appropriate public education" (P.L.94-142 regulations, Sec. 121a.4 Free and appropriate public education).

The regulations say that a handicapped child should go to school with children who are not handicapped. A child would be put in a regular class and get extra help as needed in the regular class. If the child cannot succeed in a regular class, then he could be put in a special class in a regular school. The idea of the handicapped child being put in as normal a setting as possible is called putting the child in the "least restrictive environment"(P.L. 94-142 regulations, Sec. 121a.550 Least Restrictive Enviromment).

P.L. 94-142 says that parents have to help choose what their child's subjects of study at school should be. The parents and the educators meet once each year to make plans for the child's education. These plans are written down and are called the "Individual Educational Program" or "IEP" (P.L. 94-142 regulations, Sec. 121a.340 Definition).

If the parent is displeased with any part of the child's education, the parent can ask for a hearing.

Chapter One

The Hearing - in Brief

When a parent asks for a hearing, the school district must have the hearing within 45 days. Before the hearing, someone from the school district will usually meet with the parent and try to work things out so no hearing will be needed. If that does not work, the next step is getting a hearing officer or hearing panel. Then the parent and the school district look over each other's evidence for the hearing. The hearing officer or panel listens to the witnesses and looks at all real evidence and decides the case. The written decision is sent to the parent in the mail.

The parent can ask the State Superintendent of Schools for a review. The Superintendent of schools looks over the word-for-word report of the hearing, and asks for more evidence if it is needed. Sometimes he has another hearing. Then he decides and sends the parent the decision. This decision is final.

The parent can then go to court and sue the school district in propria persona (on one's own behalf) or through an attorney.

Chapter Two

Reasons to Ask for a Hearing

The parent can ask for a hearing because:

(a) The district says the child is handicapped and needs special education, but the parent does not want special education.

(b) The district says the child is not handicapped and cannot have free special education but the parent thinks the child needs special education.

(c) The district wants to change the child to another class, school, or kind of education program, and the parent does not want that done.

(d) The parent wants to change the child to another class, school, or kind of education program, and the school district will not do that.

(e) The parent thinks the child's testing was done wrong, and the results are incorrect.

(f) The parent thinks the school is not teaching the child correctly.

(g) The parent thinks the child has been put in the wrong class, school, or education program.

(h) The parent thinks the child needs related services[1] which the child is not getting.

(P.L. 94-142 Regulations, Sec. 121a.506(a) Impartial due process hearing).

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[1]Related services are transportation, speech pathology, audiology, psychology, physical therapy, occupational therapy, recreation, early identification and assessment, counseling, medical services for diagnosis and evaluation, school health services, social work, and parent counseling and training. The child is allowed to have any services which are needed before he can benefit from special education. (P.L. 94-142 regulations, Sec. 121a.13 Related services.)

Chapter Three

Attorneys and Representatives

The parent may want to have an attorney. It is helpful, but it is not required.

The law allows the parent to bring an attorney to the hearing, and to all meetings with the school district (P.L. 94-142 regulations, Sec. 121a.508(1) Hearing rights).

The law allows the parent to bring persons who are experts about the problems of handicapped children to the hearing (P.L. 94-142 regulations, Sec. 121a.508(1) Hearing rights).

The school district has to tell the parents where to get free or low-cost legal services. The parent must ask for this information. (P.L. 94-142 regulations, Sec. 121a. 506(c) Impartial due process hearing).

Free or low-cost legal services can be found by calling the County Bar Association, Legal Aid, United Way, or a local law school. These agencies are listed in the yellow pages of the local telephone book alphabetically under "Attorneys."

Types of services an attorney may give are:

(a) Help the parent to ask for a hearing

(b) Go with the parent to the meeting with the school district.

(c) Look over the child's school records and other documents.

(d) Help the parent in choosing a fair hearing panel in those states where the parent helps to choose.

(e) Question and cross-examine witnesses at the hearing.

(f) Summarize the parent's case at the end of the hearing for the hearing officer(s).

(g) Act for the parent in all matters relating to the hearing.

Chapter Four

Time Limits

The law has time limits for the district to follow. These time limits are for the protection of the parent and child. They make sure that the parent's complaint is taken care of quickly.

When counting days, include every calendar day, including Saturdays, and Sundays.

(a) The hearing must be finished not later than 45 days after the parent asked for a hearing. (P.L. 94-142 regulations, Sec. 121a.512(a) Timeliness and convenience of hearings and reviews.

(b) The review by the State Superintendent of Schools must be finished not later than 30 days after the parent asked for a review (P.L. 94-142 regulations, Sec. 121a.512(b) Timeliness and convenience of hearings and reviews.

Some states have made other time limits that parents all over the United States may use as a rule-of-thumb about fair time limits. These examples are from the California Administrative Code Title 5 regulations. (LA. Unified School District, 1977).

(a) The school district Superintendent or someone who represents the Superintendent must meet with the parent ten school days after the parent asked for a hearing. The purpose of this meeting is to try to work things out.

(b) The parent may see all school records five days after the parent asked to see them.

(c) The parent must be given ten days notice of the date, time, and place of the hearing.

(d) The decision of the Hearing Officer(s) must be written not later than ten days after the end of the hearing.

(L.A. Unified School District, 1977, pp. 9-11.)

These regulations apply only to persons living in California. They are given here for parents' information only. They are an example of reasonable time limits. Some states will not have any time limits of their own; others will have time limits different from those of California. If a parent believes that the district is delaying on purpose, the parent should call the school district and insist on fast action.

Chapter Five

Putting Things in Writing

It is always a good idea to put everything in writing. That way the district can't say they never were told something. It is all there in black and white.

When the parent wants something from the district, send a letter.

According to some states' regulations things must be put in writing by the parent and the school district.

These are some things that must be put in writing.

(a) The parent should ask for a hearing in writing. A letter is all that is needed. (For example: "Superintendent of Schools, ABCD School District, ABCD, U.S.A. Dear Sir: I want a hearing about my child so-and-so because (put reason here). Signed, Mrs. X. ")

(b) The parent should ask in writing to see the school district's evidence before the hearing. (P.L. 94-142 regulations, Sec. 121a.508(3) Hearing rights.) The law does not say the parent has to ask for the evidence in writing, however.

(c) The parent must be given a word-for-word copy of what was said at the hearing. This copy may be in writing or tape recorded. (P.L. 94-142 regulations, Sec. 121a.508(4) Hearing rights.)

(d) A copy of the hearing decision or review decision must be mailed to the parent. (P.L. 94-142 regulations, Sec. 121a.512(2) Timeliness and convenience of hearings and reviews.)

(e) The parent can get a list from the school district of low-cost or free legal services nearby. Ask the school district in writing. (P.L. 94-142 regulations, Sec. 121a. 506(c) and (d) Impartial due process hearing.) The regulations do not say that the parent must ask in writing.

(f) The parent may ask in writing for the time and place of the hearing to be changed for a good reason. (Federal Rules of Civil Procedure).

(g) The parent may ask that the hearing be opened to the public (P.L. 94-142 regulations, Sec. 121a.508(b)(2) Hearing rights).

Chapter Six
Education Records

The parent has the right to know what evidence the school district plans to present at the hearing. The parent may ask to see statements made by witnesses, any real evidence, such as test booklets, homework papers, doctors reports, or other real evidence. The parent has the right to know the names and addresses of the witnesses the school district is going to call to testify at the hearing.

The school district has the same rights as the parent. The parent must tell the school district what evidence the parent plans to present at the hearing.

Neither party is allowed to bring any new evidence forward at the hearing which was not shown. Any such new evidence does not count. No one, therefore, should try to keep some evidence secret from the other party, as then this evidence may not count. (P.L. 94-142 regulations, Sec. 121a.508(3) Hearing rights.)

The parent may look over the child's school records. The school district must explain the records if the parent asks them to. The school district must let the parent see

the records not later than 45 days after the parent asked to see them (P.L. 94-142 regulations, Sec. 121a. 562(a) Access rights).

Making Copies

The parent may ask for copies of the child's school records (P.L. 94-142 regulations, Sec. 121a.562(b)(2) Access rights).

The school district may charge a fee for copies of records (P.L. 94-142 regulations, Sec. 121a.566(a) Fees).

Chapter Seven

Languages other than English

In many sections of P.L. 94-142 regulations, it says that the school district must use the parent's native language to tell the parent things. But there is no mention of using the native language in the section of the regulations which talks about hearings.

Some states say that the school district or the parent can bring a person to the hearing to translate for the parent. This person needs to be approved by the hearing officer or hearing panel ahead of time. (LA. Unified School District, 1977, p.10.)

The parent who wants an interpreter at the hearing or for other matters should ask the Superintendent of Schools of the local school district.

Chapter Eight

About Fair Hearings

Who Pays

The hearing is paid for by the school district. But the district does not have to pay for the parent's attorney or witnesses. (P.L. 94-142 regulations, "Comments," Impartial due process hearing, p.42511.)

The Hearing Officer

In some states there is one hearing officer while in other states there is a hearing panel of several members (P.L. 94-142 regulations, "Comments," Impartial hearing officer, p.42511).

In some states the parent can help to choose the panel (L.A. Unified School District, 1977, p.10).

A hearing officer or hearing panel member should have special knowledge about the handicap of the child the hearing is about. The hearing officer may not be a regular employee of the school district. The school district must keep a list of hearing officers and what their backgrounds are. The parent may ask to see the list. (P.L. 94-142 regulations, Sec. 121a.507(c) Impartial hearing officer.)

Hearing Rights

The parent has these rights:

(a) To bring an attorney to the hearing;

(b) To bring persons with special knowledge about the problems of handicapped children;

(c) To bring the child to the hearing;

(d) To bring witnesses to testify (speak under oath).

(e) To make witnesses come to the hearing. Ask the Superintendent of Schools to subpoena the witnesses for the parent.

(f) To question (cross-examine) all the witnesses at the hearing;

(g) To stop the school district from giving any evidence which they did not tell the parent about five days before the hearing;

(h) To give evidence at the hearing.

(P.L. 94-142 regulations, Sec. 121a.508 Hearing rights)

Rules of Evidence

There are three kinds of evidence:

(a) Direct evidence - when someone who saw a fact testifies as to that fact;

(b) Real evidence - when a real thing (such as a test booklet, a homework paper) is put before the court for inspection;

(c) Circumstantial evidence - when certain facts are true and give the idea that therefore other facts are true.

(Federal Rules of Civil Procedure)

Time and Place of Hearings

The hearing or the review must be held at a time and place fairly easy for the parent and child to get to. This is called a "reasonably convenient time and place" in the regulations. (P.L. 94-142 regulations, Sec. 121a.512(d) Timeliness and convenience of hearings and reviews).

The parent can ask for the time and place of the hearing to be changed for a good reason (such as the parent did not get ten days notice, or can not get time off from work). (Federal Rules of Civil Procedure).

Chapter Nine

What Happens to the Child

From the moment the parent asks for a hearing until the final decision in the hearing or review is given to the parent, the child must stay in the same class and have the same related services. The child can not be moved to another class, school, or program until the end of all complaint proceedings,[1] unless the parent and the school district decide together to change the child's placement (P.L. 94-142 regulations, Sec. 121a.513(a) Child's status during proceedings).

If the reason for the hearing is to get the school district to let the child in to public school for the first time, the child must be put into public school right away (P.L. 94-142 regulations, Sec. 121a.513(b) Child's status during proceedings).

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[1] Complaint proceedings are the letter asking for a hearing, the hearing, the review by the State Superintendent of Schools, and the lawsuit if the parent goes to court. (Federal Rules of Civil Procedure).

Chapter Ten

Educational Evaluations

The school district does an educational evaluation of the child to prepare the child's Individual Educational Plan. Testing the child and watching the child in the classroom to see what things he can and cannot do are two important parts of the educational evaluation. The school district or the parent may use the written report about the educational evaluation as evidence at the hearing.

The parent has the right to get another educational evaluation done by someone else to get a second opinion. The parent must pay for this, unless the parent can prove at a separate hearing that the school district did a bad job. (P.L. 94-142 regulations, Sec. 121a.503 Independent educational evaluation).

The results of this evaluation cannot be ignored by the school district in making the Individual Educational Plan (P.L. 94-142 regulations Sec. 121a.503(c)(1) Independent educational evaluation).

The parent and the school district may both use the results of this evaluation as evidence at the hearing (P.L. 94-142 regulations Sec. 121a.503(c)(2) Independent educational evaluation).

The hearing must be finished within 45 days after the parent asked for a hearing. The review by the State Superintendent of Schools must be finished 30 days after that. A lawsuit, if the parent decides to sue the school district, may take years to finish because of the delays in the judicial system.

There is no doubt that there is time and effort involved in pursuing due process. Each parent must decide if the possible benefits are worth it.

Chapter Eleven

Summary

This instruction book has been written especially for parents. It provides the information parents want when they are thinking about asking for a hearing.

Although specific details may be different from school district to school district, most of the methods in this manual will be the same all over the United States. For example, in some states the school districts may telephone parents to tell them the time and place of the hearing. In others the districts may send a letter. Some districts will make the parent put everything in writing. Others will be happy to honor verbal requests.

It is important to remember that whenever a parent has a question, he should call the local Superintendent of Schools and ASK, ASK, ASK! No one expects the parent to be an expert about hearings. If a parent wants to know anything at all, the school district representative must answer the question to the best of his ability. The school district is supposed to make sure the parent knows his rights (P.L. 94-142 regulations, Sec. 121a.501 General responsibility of public agencies).

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